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EXAMINER

PAK, JOHN D

ART UNIT PAPER NUMBER

1616

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/799,434

Applicant(s)

WESCHLER, RICHARD

Examiner

JOHN PAK

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-9 is/are rejected.
- 7) ☒ Claim(s) 2 and 10-15 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

MC

EP

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Claims 1-15 are pending in this application.

Applicant is advised to clarify "a benzaldehyde, citronella, eucalyptus" in claim 2.

Benzaldehyde is one single specific substance, so the article "a" before it is improper.

Further, without additional language, "citronella, eucalyptus" would appear to convey the plants per se. If applicant actually intended citronella oil and eucalyptus oil instead, appropriate corrections are suggested.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Koji et al. (JP 3-157134).

Koji et al. disclose an odor absorbing clay mineral, wherein magnesium silicate-containing clay mineral and one or more metallic ions selected from aluminum and transition metals from atomic number 22 to 74 (for example, Fe=26, Cu=29, Zn=30, Ag=47) are combined. See HCAPLUS abstract, 115:214022/DN. The metallic ions are loaded on the clay mineral. 2-4 wt% of the magnesium silicate containing clay mineral is integrated with the metal (page 3, sentence bridging bottom two paragraphs). The transition metal or aluminum that is integrated to the clay mineral bonds to odorous

sulfur substances such as hydrogen sulfide by a metal – sulfur bonding effect or complexing effect (see the partial translation of page 4, attached hereto).

Koji et al. do not expressly state in verbatim language, “eliminate at least 0.01 grams of H_2S per gram of composition.” However, applicant’s 0.01 g/1 g is only 1 wt%. Also, 0.01 g is only about 0.0003 mole of H_2S . Since Koji et al. teach that the aluminum or transition metal bonds to hydrogen sulfide to absorb the odorous substance, that would mean only about 0.0003 mole of metals such as iron, copper, zinc and silver would need to be incorporated into the magnesium silicate to take up the 0.0003 mole of H_2S . 0.0003 mole of, for example, silver is 0.014 g (about less than 2 wt% silver based on the clay mineral weight). Since Koji et al. expressly teach 2-4 wt% metal incorporation, Koji’s disclosure would necessarily “eliminate at least 0.01 grams of H_2S per gram of composition.”

With respect to “a metal compound” in applicant’s claims, it is noted that the metal ion taught by Koji et al. is within such language. The metal ion would have had to come from a source, which would necessarily have been a metal compound, even if a natural oxide thereof. As for the claimed “Fuller’s earth” feature, it is noted that applicant defines the feature to be inclusive of magnesium silicate (see claim 7). Koji et al. expressly disclose magnesium silicate containing clay mineral.

For these reasons, the claims are anticipated.

Claims 1, 7, 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Brinkman et al. (US 4,089,945).

Brinkman et al. explicitly disclose a shampoo composition that contains, inter alia, 15 wt% magnesium/aluminum silicate (5% solution in water) and 0.5 wt% disodium cupric ethylenediaminetetraacetate (Example I on columns 7-8). Other metal cation complexes are disclosed, at concentrations as low as 0.1 wt% (column 6, lines 18-24).

Applicants' dependent claim 7 makes it clear that magnesium silicate or aluminum silicate falls within the scope of "Fuller's earth" in claim 1. Brinkman's composition has both magnesium and aluminum silicate.

Applicant's claim requires "eliminate at least 0.01 grams of H₂S per gram of the composition." Although Brinkman et al. do not expressly state such a feature in verbatim language, such feature would nonetheless have been necessarily present in the disclosed composition. Brinkman's shampoo is disclosed to counteract sulfide odor (column 2, lines 1-8). Applicant's claimed invention is quite broad, and when claim 1 is read together with claims 7-8, the invention encompasses Mg/Al silicate + 1-5000 ppm metal compound. Brinkman et al. teach counteracting of sulfide odor already, and given that their 0.5 wt% copper compound is the same as 5000 ppm metal compound in applicant's claim 8, the properties present in applicant's composition must necessarily be present in Brinkman's composition by virtue of the same composition ingredients. MPEP 2112, 2112.01. The claims are thereby anticipated.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-7, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koji et al. (JP 3-157134).

Koji et al. disclose an odor absorbing clay mineral, wherein magnesium silicate-containing clay mineral and **one or more** metallic ions selected from aluminum and transition metals from atomic number 22 to 74 (for example, Fe=26, Cu=29, Zn=30, Ag=47) are combined. See HCAPLUS abstract, 115:214022/DN. The metallic ions are loaded on the clay mineral. 2-4 wt% of the magnesium silicate containing clay mineral is integrated with the metal (page 3, sentence bridging bottom two paragraphs). The transition metal or aluminum that is integrated to the clay mineral bonds to odorous sulfur substances such as hydrogen sulfide by a metal – sulfur bonding effect or complexing effect (see the partial translation of page 4, attached hereto).

It is noted that claims 1 and 7 were previously rejected as being anticipated by Koji et al. This is an alternative ground of rejection, which treats claims 1 and 7, as well as claims 3-6 and 9, under an obviousness inquiry pursuant to section 103(a).

The difference between the claimed invention and Koji et al. is that Koji et al. do not expressly state in verbatim language, "eliminate at least 0.01 grams of H_2S per gram of composition." However, applicant's 0.01 g/1 g is only 1 wt%. Also, 0.01 g is only about 0.0003 mole of H_2S . Since Koji et al. teach that the aluminum or transition metal bonds to hydrogen sulfide to absorb the odorous substance, that would mean only about 0.0003 mole of metals such as iron, copper, zinc and silver would need to be incorporated into the magnesium silicate to take up the 0.0003 mole of H_2S . 0.0003 mole of, for example, silver is 0.014 g (about less than 2 wt% silver based on the clay mineral weight). Since Koji et al. expressly teach 2-4 wt% metal incorporation, Koji's disclosure would necessarily "eliminate at least 0.01 grams of H_2S per gram of composition."

With respect to "a metal compound" in applicant's claims, it is noted that the metal ion taught by Koji et al. is within such language. The metal ion would have had to come from a source, which would necessarily have been a metal compound, even if a natural oxide thereof. Applicant's claims 3-6 set forth the metal compound as silver nitrate, ferric sulfate, copper sulfate, silver nitrate + zinc sulfate, or solutions thereof. Koji et al. teach the use of one or more transition metals 22-74, wherein Fe=26, Cu=29, Zn=30, Ag=47. Clearly, such metals are well known and readily available as nitrate or sulfate salts, so such selection of metal compounds would have been obvious to the ordinary skilled artisan. The motivation to arrive at the specific metal compounds arises

from the ready availability of such metals and compounds thereof, taken with Koji's teachings.

As for the claimed "Fuller's earth" feature, it is noted that applicant defines the feature to be inclusive of magnesium silicate (see claim 7). Koji et al. expressly disclose magnesium silicate containing clay mineral.

Applicant's claim 9 requires Fuller's earth to be present from about 70-85 wt%. Given that Koji et al. teach the absorption of odorous materials by clay mineral containing magnesium silicate, and further in view of the fact that 2-4 wt% metal incorporation is taught, one having ordinary skill in the art would have been motivated to utilize high weight amounts of the magnesium silicate containing clay mineral to carry the metal. 70-85 wt% is a sufficiently high amount of the clay mineral so that enough metal ion could be incorporated and then mixed with diluents. The diluent can comprise clay material impurities that do not contain the magnesium silicate or other conventional diluent or adjuvant for odor control.

Therefore, the claimed invention, as a whole, would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, because every element of the invention and the claimed invention as a whole have been fairly disclosed or suggested by the teachings of the cited reference.

Claims 1, 4, 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lutwick (CA 1,067,627).

Lutwick discloses depositing ferric ions on a porous support such as Fuller's earth (page 3, lines 17-20). Ferric ions are delivered in the form of ferric hydroxide. Lutwick disclose various weight ranges for the ferric ions, such as 3-4% (page 3, line 30), 4.6 wt/wt% ferric ions as ferric hydroxide (Example 1 on pages 4-5), and 0.97 % ferric ions as ferric hydroxide (Example 2 on page 5). The ferric ion can be delivered as aqueous solution of a water soluble salt such as ferric chloride, ferric nitrate or "ferrous sulphate"¹ (page 3, lines 31-33).

Lutwick does not mention anything about hydrogen sulfide elimination. However, one cannot escape the fact that Lutwick explicitly discloses Fuller's earth + ferric ions. Lutwick's concentration of ferric ions from ferric compounds is higher than the metal compound concentration recited in applicant's claim 7. This means that there are even more ferric metal ions in Lutwick's Fuller's earth carrier to eliminate hydrogen sulfide.

The fact that Lutwick is silent as to hydrogen sulfide elimination does not detract from the fact that the same exact modified-Fuller's earth composition had been produced by Lutwick before applicant's invention. Lutwick's composition is capable of functioning in the same manner as applicant's composition since the composition

¹ Even though "ferrous sulphate" is recited, one having ordinary skill in the art would have recognized that to be a typographical error for ferric sulfate since in the very next phrase within the same sentence, Lutwick states, "and the ferric ion is precipitated ..." (page 3, last line).

makeup is identical; and given that the instant claims are directed to the composition per se (not a method), the composition per se is anticipated by Lutwick's disclosure.

MPEP 2112, 2112.01.

As discussed in the footnote 1, ferric sulfate would have been obvious from Lutwick's disclosure since ferric ions and water soluble salts of ferric ions are taught. Ferric sulfate is soluble in water, albeit slowly.

As for Fuller's earth comprising Mg or Al silicate, it is the Examiner's position that Fuller's earth, as disclosed by Lutwick, is a natural clay material that would have naturally contained therein at least aluminum silicate.

Therefore, the claimed invention, as a whole, would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, because every element of the invention and the claimed invention as a whole have been fairly disclosed or suggested by the teachings of the cited reference.

Claims 2 and 10-15 are objected to as being dependent upon a rejected base claim, but would be allowable, *subject to a search update at the time of the next Office action*, if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Any inquiry concerning this communication or earlier communications from the Examiner should be directed to JOHN PAK whose telephone number is **(571)272-0620**.

The Examiner can normally be reached on Monday to Friday from 8 AM to 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's SPE, Gary Kunz, can be reached on **(571)272-0887**.

The fax phone number for the organization where this application or proceeding is assigned is **(571)273-8300**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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